



California Fair Political Practices Commission

March 11, 1987

Thomas C. Lonergan
535 Chesnut Street
P.O. Box 10
Fort Bragg, CA 95437

Re: Your Request for Advice
Our File No. I-87-042

Dear Mr. Lonergan:

You have requested advice concerning your duties as Fort Bragg City Attorney under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Are you prohibited from giving advice to the city with respect to applications filed by a property owner whose property is situated across the Noyo River from property you own?

CONCLUSION

You may not participate in any decision which will have a reasonably foreseeable material financial effect on the real property you own. We do not have sufficient facts to determine whether or not decisions concerning the applicant's property will have such an effect on your property.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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FACTS

You are the City Attorney for the City of Fort Bragg. In that capacity, you give advice to the Fort Bragg City Council and its staff.

A local property owner, Vincent Benedetti, has applied to the city council in a zoning matter. Mr. Benedetti represents members of his family concerning certain property within the city. The property also lies within the coastal zone. One issue raised by Mr. Benedetti's application concerns the appropriate jurisdiction for determination of the zoning and coastal plan issues raised (i.e., the city council or the California Coastal Commission).

You own an undivided 1/3 interest in certain real property located across the Noyo River from the Benedetti property. Your property is located outside the city limits, but inside the coastal zone.^{2/}

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

In the present situation, you may not participate in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the real property you own.^{3/} In order to

^{2/} Your property (Assessor Parcels 18-350-01 and 18-350-02) is currently zoned FV (fishing village) and designated as flood plain.

^{3/} This analysis assumes your interest in the real property is worth \$1,000 or more.

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determine whether you will be required to disqualify yourself from participating in a particular decision before the city council, you must analyze whether the effect of the decision on your property is reasonably foreseeable, material, and distinguishable from the effect on the public generally. Each of these elements is discussed below.

Foreseeability

An effect on an official's economic interest is foreseeable when there is a substantial likelihood that it will ultimately occur as a result of a governmental decision. An effect does not have to be certain to be reasonably foreseeable; however, if an effect is a mere possibility, it is not foreseeable. (See, Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975); copy enclosed.)

Materiality

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in making a determination as to whether the effect of the decision on any one of the official's economic interests will be "material." It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material.

Whether an effect on real property in which an official has an interest will be considered material generally depends on the effect on the fair market value of the property.^{4/} Regulation 18702(b)(2) establishes a "sliding scale" that you should use in making the "materiality" determination:

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

* * *

^{4/} Regulation 18702.1(a)(3) requires the official's disqualification when the decision concerns the zoning, rezoning, annexation, sale, purchase, lease or any similar decision as to real property in which the official has an interest. This regulation is not applicable in your situation because the decision does not concern the zoning of your real property.

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2)(A)(B).

As a general rule, an effect of \$10,000 or more on the fair market value of real property is material. When the effect is between \$1,000 and \$10,000, it may be material, depending on the value of the real property. (Regulation 18702(b)(2).) An effect below \$1,000 is deemed not material. (Regulation 18702(b)(2)(B).)

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. (Regulation 18702(a).) For example, the effect may be material if the decision significantly affects the use or enjoyment of the land.

Public Generally

A determination must be made as to whether the effect of the decision on the official's economic interest will be distinguishable from the effect on the public generally. Regulation 18703 provides that a material financial effect of a government decision on an official's economic interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. For example, a decision by a city council to increase the sales tax, which will affect all residents of the city, does not affect any individual city councilmember in a different manner

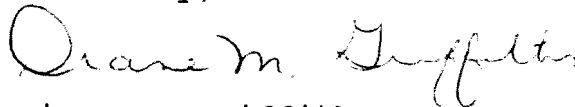
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than it affects the public generally. As a result, it does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on the official's economic interest than on other members of the general public, may constitute a conflict of interest for the official.

We do not have sufficient facts to determine whether or not decisions affecting the Benedetti property would affect your property in a manner that is both foreseeable and material.^{5/} The principles discussed above should assist you in analyzing the situation. Facts of relevance to consider include the current and possible future uses of the Benedetti property and your own property and the distance between the two.

If you have further questions, I may be reached at (916) 322-5901.

Sincerely,



Diane M. Griffiths
General Counsel

DMG:sm
Enclosures

^{5/} We consider your request to be a request for informal assistance since we do not have sufficient factual data to make a final determination as to a specific pending decision. (Regulation 18329(c).) Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FEB 2 10 05 AM '87

Thomas C. Lonergan

ATTORNEY AT LAW
535 CHESTNUT ST. P.O. BOX 10
FORT BRAGG, CA 95437-0010

707 964-6375

January 29, 1987

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

re: Conflict of Interest

Gentlemen:

The undersigned is the City Attorney for the City of Fort Bragg. In that capacity, I give advice and counsel to the City Council of the City of Fort Bragg, as well as the staff members thereof, with respect to all issues coming before the City.

One Vincent Benedetti applied to the City Council in a zoning matter. Mr. Benedetti represents other members of his family with respect to certain property lying within the city limits of Fort Bragg. Said property also lies within the Coastal Zone of the State of California and is therefore subject to the Coastal Act (Public Resources Code Section 30,000 et seq.). Mr. Benedetti's application presents certain issues with respect to zoning and amending the local Coastal Plan and determining jurisdiction over his application, whether in the Fort Bragg City Council or in the California Coastal Commission.

Mr. Benedetti has raised the issue that the undersigned City Attorney has a conflict of interest in this matter, in that I have declared on my Financial Declaration that I am the owner of certain real property immediately across the Noyo River from the Benedetti property. I own an undivided 1/3 interest in said property, said property being outside the city limits of Fort Bragg, but inside the Coastal Zone and therefore subject to the Coastal Act. Said property in which I hold an interest, being Assessor Parcels 18-350-01 and 18-350-02, are zoned FV (fishing village) and designated as flood plain.

Your advice is sought on whether or not, by virtue of my ownership of an undivided 1/3 interest in the property which is subject to the jurisdiction of the County of Mendocino and the Coastal Commission, disqualifies me from giving advice to

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the City of Fort Bragg and its staff with respect to applications filed by Vincent Benedetti on the Benedetti property. Your advice will be appreciated.

Very truly yours,



Thomas C. Lonergan

TCL:cac

cc: Mr. Frank Felice, Community Development Director
City of Fort Bragg
416 North Franklin Street
Fort Bragg, California 95437

cc: Mr. Vincent Benedetti
440 South Street
Fort Bragg, California 95437



California Fair Political Practices Commission

March 5, 1987

Thomas C. Lonergan
City Attorney
P.O. Box 10
Fort Bragg, CA 95437-0010

Re: Your Request for Advice
Our File No. 87-042

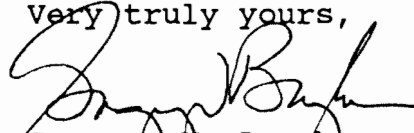
Dear Mr. Lonergan:

This letter is to advise you that I have determined that good cause exists for an extension of time for responding to your request for advice under the Political Reform Act.^{1/} Section 83114(b) requires the Commission to provide advice to a requestor within 21 working days of receipt of all the facts material to answering the request for advice. Section 83114(b) also provides that this time may be extended for good cause.

Commission advice letters provide certain immunities. Therefore, each advice letter must be given a careful and complete review before it is issued. As a result of a sudden and substantial increase in the volume of advice requests which arrived within a short period of time, the staff is unable to fully and fairly respond to all of those requests at the same time. In order to assure full consideration of your request, I have extended the time for our response by 14 working days. Our response will be mailed to you on or before that date.

If you anticipate significant problems as a result of this delay, please contact the Commission's General Counsel, Diane Griffiths at (916) 322-5901.

Very truly yours,


Gregory W. Baugher
Executive Director

GWB:plh

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code.



California Fair Political Practices Commission

February 5, 1987

Thomas C. Lonergan
Fort Bragg City Attorney
P.O. Box 10
Fort Bragg, CA 95437-0010

Re: 87-042

Dear Mr. Lonergan:

Your letter requesting advice under the Political Reform Act was received on February 2, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh